

**STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In the Matter of Protest of:)

CASE No. 2011 - 127

Baxter Healthcare Corporation)

Materials Management Office)

POSTING DATE: September 19, 2011

IFB No. 5400003050)

Anti-Hemophilia Factor Blood Products)

MAILING DATE: September 19, 2011

Department of Health & Env. Control)

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Baxter Healthcare Corporation (Baxter).¹ With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure anti-hemophilia factor blood products for the Department of Health and Environmental Control (DHEC). In the letter, Baxter protested MMO's intent to award to BDI Pharma Inc. alleging that MMO improperly rejected its bid as late.

Based upon review of the protest letter, the affidavits, and the official procurement file, the CPO has conducted an administrative review pursuant to Section 11-35-4210(4) of the South Carolina Consolidated Procurement Code (Code) and issues this Decision without a hearing.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

¹ Baxter actually protested July 6, 2011, which was before MMO issued its intent to award. At that time, the protest was premature, as the award had not been posted. MMO posted its intent to award August 25, 2011, at which time the CPO considered the protest ripe for consideration.

1. On June 9, 2011, MMO issued the IFB. (Ex. 1)
2. On June 24, 2011, MMO opened the bids received.
3. On July 6, 2011, Baxter filed its protest with the CPO.
4. On August 25, 2011, MMO posted its intent to award to BDI Pharma Inc. (Ex. 2)

CONCLUSIONS OF LAW

Contracts more than \$50,000 must be awarded by competitive sealed bidding. S.C. Code Ann. § 11-35-1520(1). Both the Code and the supporting regulations require the IFB to designate the date and time set for receipt of bids, which is also known as the bid opening date. S.C. Code Ann. § 11-35-1520(3) & (5); S.C. Code Reg. 19-445.2030. Regarding receipt and safeguarding of bids, the Code provides that, “[a]ll bids, including modifications, received before the time of opening must be kept secure and unopened, except as provided by regulation of the board.” S.C. Code Ann. § 11-35-1520(4). Regulation 19-445.2050(A) further provides, in relevant part,

The procurement officer of the governmental body or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. In the presence of one or more state witnesses, he shall then personally and publicly open all bids received prior to that time.”

Moreover, “[a]ny bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.” S.C. Code Reg. 19-445.2070(A).

Pursuant to Section 11-35-4210(1)(b) of the Code, only an *actual* bidder has standing to protest.² The South Carolina Procurement Review Panel (Panel) has defined a “bidder” as a vendor who submits a bid in response to an IFB. In Re: Protest of Smith & Jones Distributing Co., Inc., Case

² Section 11-35-4210(1)(b) reads “[a]ny actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

No. 1994-5. In Smith & Jones, the Panel also found that where a vendor failed to submit a bid they were not an “actual” bidder and therefore lacked standing to protest. Moreover, the Panel has also held that submitting a late bid is the same as submitting no bid at all; therefore, a late bid does not convey standing to protest either. In Re: Protest of SC Assoc. of the Deaf, Case No. 2008-5 (finding a party who submitted a late bid has the same status as a party who has not submitted a bid and thus has no standing to protest the intended award); See also, In Re: Protest of Winyah Dispensary, Inc.; Appeal by Winyah Dispensary, Inc., Case No. 1994-18 (stating “after bid opening, a vendor that has not submitted a bid has no standing to protest a solicitation or award.”)

The IFB required bidders to deliver their sealed bids to MMO before 11:00 AM on June 24, 2011. (Ex. 1) Based on the affidavit of Wanda Honeycutt, MMO Bid Clerk, and the attached receipt, UPS delivered Baxter’s hard copy bid to MMO at 12:43 PM on June 24, 2011, well after the 11:00 AM bid deadline. (Ex. 3 – Affidavit of Wanda Honeycutt with attachments) At 12:44 PM, Ms. Honeycutt time stamped it, opened the package for the bid identification number, determined it to be late since it was after the designated bid opening time, and notified Theresa Watts, MMO Procurement Manager. (Ex. 3) Ms. Watt’s affidavit further confirms that the bid was late and therefore rejected. (Ex. 4 – Affidavit of Theresa L. Watts with attachments).

Baxter does not dispute that it did not submit its hard copy bid prior to 11:00 AM on June 24, 2011. Instead at issue with this protest is whether MMO rejected Baxter’s bid inappropriately. According to Baxter’s protest letter, it contends that it did timely submit a bid that was received in accordance with the IFB. Baxter’s contention was based on two grounds.

First, Baxter argues that the IFB allowed for submittal of bids via electronic email and that its bid was emailed to Ms. Watts at 10:58 AM on June 24, 2011, which was prior to the bid opening. Ms. Watts did confirm that she received an emailed bid document from Jillian Cycyota at Baxter at 10:58

AM on June 24, 2011. (Ex. 4) However, she immediately advised Ms. Cycyota that she was unable to accept emailed bids and rejected it on the basis that emailed bids were not authorized by the IFB. (Ex. 4) According to Baxter, the IFB authorized submissions via email. That is incorrect.

The IFB actually contained the following clauses:

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)] (Ex. 1, p. 8)

SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)

(a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means)...(e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. (Ex. 1, p. 11)

Therefore, emailed bids are unacceptable unless the solicitation authorizes them. No where does the IFB actually authorize emailed bids. (Ex. 1) Therefore, the emailed bid was unauthorized and is irrelevant.³

Second, in the alternative, Baxter contends that the hard copy bid was in fact timely because MMO had extended the bid opening until 4:31 PM on that date and UPS had delivered it well before that time. In support of its argument, Baxter points to a computer screen that shows a later submission ending date and time and argues that the header reads "Notice of Time Extension." However, Baxter's allegation that the bid submission period was extended is not correct.

In order to enter paper bids into the State's purchasing system and generate award documents, after bid openings, an MMO bid clerk must log onto the system as a "surrogate" and enter the bid

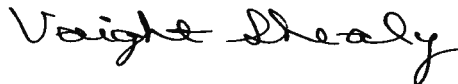
³ The CPO notes that the State of South Carolina has not accepted emails submitted to the State as formal sealed bids except in rare emergency situations.

amounts received. (Ex. 3; for further explanation see <https://upperform.sc.gov/gm/folder-1.11.11746?originalContext=1.11.11388>.) According to Ms. Honeycutt, the system acknowledges this activity and updates the ending time on the screen, but advises any bidders who attempt to bid during that time, “[b]ids will not be accepted during this time.” In other words, the bid opening time was not extended but rather it was an internal administrative adjustment necessitated by the system. Moreover, what Baxter characterized as a header that indicated the opening time had been extended was not; instead the computer screen contained at the top a standard “NOTICE OF TIME EXTENSION, POSTINGS OF AWARD RELATED DOCUMENTS”, which is a standard notice of the Information Technology Management Office, not State Procurement, that advises bidders regarding the posting of award for each solicitation. (Emphasis added) Therefore, that notice has no relation to the bidding timeframe; it merely appears on the same computer screen. The IFB, not a computer screen, is the official contract document and designates the opening date and time. Furthermore, Baxter was clearly aware of the time established in the IFB.

The CPO finds that Baxter’s bid was not received by the opening date and time set forth in the IFB, so it was late. Therefore, MMO properly rejected it. Since Baxter did not submit a timely bid, it was not an actual bidder under the Code, and it lacks standing to protest this intent to award.

DETERMINATION

For the aforementioned reasons, the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

September 19, 2011
Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2011)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the General Appropriations Act for Fiscal Year 2011-2012, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, an incorporated business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



BioScience

July 6, 2011

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Protest by Baxter Healthcare Corporation to South Carolina Department of Health and Environmental Control, Solicitation #5400003050 (Anti-hemophilia Factor Blood Products)

To Whom it May Concern:

Please consider this letter as a formal protest by Baxter Healthcare Corporation ("Baxter") to the State of South Carolina Department of Health and Environmental Control's Solicitation #5400003050 (Anti-hemophilia Factor Blood Products) ("Solicitation") pursuant to Section [02-2A085-1] of the Solicitation.

A. Background

Baxter submitted its response to the Solicitation on June 24, 2011 via (1) email and (2) hard copy delivered via UPS ("Offer"). A copy of the Offer is attached to this letter for your convenience as **Exhibit A**.

For the reasons set forth below, Baxter is respectfully protesting the decision by Theresa Watts, Procurement Officer for the Solicitation, that Baxter's Offer missed the Deadline for Submission of Offer in regards to the Solicitation.

B. Grounds for Protest

1. The Solicitation allowed for Electronic Submission of the Offer.

Baxter believes that the Solicitation allows for the Offer to be submitted on-line via electronic mail. Baxter understands that the Section "Submitting your Offer" in the Solicitation states that "*Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation*" (emphasis added).

Correspondingly, the cover page of the Solicitation twice states on-line submissions as a method for submitting an Offer to the Solicitation:

- "... Unless submitted on-line, your offer must be submitted in a sealed package."; and
- "Unless submitted on-line, you must submit a signed copy of this form with Your Offer."

Baxter believes that the above statements as included on the cover page of the Solicitation authorize on-line submissions via electronic mail (since no other on-line submission methods are provided in the Solicitation). As such, Baxter's reasonably believes that its Offer sent via email at 10:58am Eastern Time, on Friday, June 24, 2011 should be deemed as compliant with the Solicitation's requirements for submissions of offers.

2. The Procurement Office Website extended the Offer until 4:31 PM on June 24th.

Although the cover page to the Solicitation states "SUBMIT OFFER BY (Opening Date/Time): 06/24/2011, 11:00 AM", Baxter reasonably believed that the deadline for submission of the Offer was extended until 4:31 PM on June 24, 2011. The South Carolina Procurement Office website contained a heading entitled "Notice of Time Extension" (emphasis added) that stated the "Submission Ending Date/Time" as "06/24/2011 04:31:00PM"(please see the screen shot below):

The screenshot shows a Microsoft Internet Explorer browser window with the address bar displaying "http://webprod.do.sc.gov/SCSolicitationWeb/contractSearch.do?solicitationnumber=5400003050". The website header features the "BIOB PROCUREMENT SERVICES" logo and "SC Budget and Control Board". The main content area is titled "NOTICE OF TIME EXTENSION POSTINGS OF AWARD RELATED DOCUMENTS" and includes a "Refresh" button. Below this is a table with the following data:

Solicitation Number	Solicitation Description	Purchasing Agency	Delivery Point	Submission Ending Date/Time
5400003050	Anti-hemophilia Factor Blood Products	MMO	Columbia, SC	06/24/2011 04:31:00 PM

Below the table, the "Solicitation Attachments" section shows "1 solicitation attachments found, displaying all solicitation attachments." and lists one attachment: "1 [i] Invitation for Bid.doc" with a "Date/Time Posted" of "06/08/2011 02:17:28 PM". The "Contract Awards" section states "No contracts found!" and includes a "BACK" link. The browser's status bar at the bottom shows "Internet".

From this posting on the Procurement Services Website under the heading "Notice of Time Extension", Baxter reasonably assumed that the deadline was extended from the original 11:00 AM to 4:31PM. Accordingly, when the Offer was sent by Baxter via UPS and signed for at 12:43PM, this receipt of the Offer should be deemed as compliant with the Solicitation's requirements for submissions of offers. Additionally and/or alternatively, as mentioned in the previous section of this letter, Baxter's submission of the Offer via email at 10:58am Eastern Time should also be considered compliant.

C. Relief Requested.

Given the above stated circumstances, Baxter kindly requests that the State of South Carolina Department of Health and Environmental Control: **(1) give due regard to this protest regarding Baxter's Offer, (2) deem Baxter's Offer as timely received under the Solicitation's requirements, and (3) postpone making an award for the Solicitation until Baxter's Offer is carefully assessed.**

Baxter is firmly committed to the Hemophilia community and supports access to all therapies in South Carolina. We urge you to reconsider including Baxter's Offer within the Solicitation process to help ensure access to Baxter's therapies to those hemophilia patients who have come to rely upon these therapies to cope with this debilitating disorder.

Thank you for your consideration.

Sincerely Yours,




Carla Gordon

Manager, Sales Operations

CC: Alison Clifford, Todd Holder

Enclosures

**EXHIBIT A
Baxter's Offer**

	State of South Carolina Invitation for Bid	Solicitation Number:	5400003050
		Date Issued:	06/09/2011
		Procurement Officer:	Theresa Watts
		Phone:	(803)737-4127
		E-Mail Address:	twatts@mms.sc.gov

DESCRIPTION: Anti-hemophilia Factor Blood Products

USING GOVERNMENTAL UNIT: SC Department of Health & Environmental Control


The Term "Offer" Means Your "Bid" or "Proposal". Unless submitted on-line, your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Offer" provision.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:	
MAILING ADDRESS: Materials Management Office PO Box 101103 Columbia SC 29211	PHYSICAL ADDRESS: Materials Management Office Capital Center 1201 Main Street, Suite 600 Columbia SC 29201

SUBMIT OFFER BY (Opening Date/Time): 06/24/2011 11:00 AM (See "Deadline For Submission Of Offer" provision)

QUESTIONS MUST BE RECEIVED BY: 06/14/2011 5:00 PM (See "Questions From Offerors" provision)

NUMBER OF COPIES TO BE SUBMITTED: One (1) original in hard copy, one (1) electronic copy (See MAGNETIC MEDIA -- REQUIRED FORMAT -- Section II B), one (1) redacted copy in hard copy and one (1) redacted electronic copy (see SUBMITTING CONFIDENTIAL INFORMATION -- Sec. II A and SUBMITTING REDACTED OFFERS -- Sect. 4.)

CONFERENCE TYPE: Not Applicable DATE & TIME: <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)</small>		LOCATION: Not Applicable
AWARD & AMENDMENTS	Award will be posted on 06/30/2011 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov	
Unless submitted on-line, you must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date. <small>(See "Signing Your Offer" and "Electronic Signature" provisions.)</small>		
NAME OF OFFEROR BAXTER HEALTHCARE CORPORATION BIOSCIENCE BUSINESS UNIT <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.	
AUTHORIZED SIGNATURE  <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	TAXPAYER IDENTIFICATION NO. 36-2604143 <small>(See "Taxpayer Identification Number" provision)</small>	
TITLE	STATE VENDOR NO.	

DIR, STRATEGIC PRICING & CONTRACTS (business title of person signing above)		7000041450 (Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)
PRINTED NAME RONALD L CZAPLICKI (printed name of person signing above)	DATE SIGNED 06/22/11	STATE OF INCORPORATION DELAWARE (If you are a corporation, identify the state of incorporation.)
OFFEROR'S TYPE OF ENTITY: (Check one)		
(See "Signing Your Offer" provision.)		
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Other _____		
<input checked="" type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Corporation (tax-exempt) <input type="checkbox"/> Government entity (federal, state, or local)		

COVER PAGE (NOV. 2007)

Prior to contract award, Baxter may, at its option, withdraw and terminate its bid immediately at any time upon written notice to Procurement Officer

PAGE TWO

(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business) ONE BAXTER PARKWAY DEERFIELD, IL 60015	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause) ATTN: CONTRACTS DF3-3E ONE BAXTER PARKWAY DEERFIELD, IL 60015 <div style="display: flex; justify-content: space-between;"> <u>847-940-5836</u> <u>877-870-0373</u> </div> <div style="display: flex; justify-content: space-between;"> Area Code - Number - Extension Facsimile </div> <div style="display: flex; justify-content: space-between;"> <u>JILLIAN_CYCYOTA@BAXTER.COM</u> E-mail Address </div>
PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause) BAXTER HEALTHCARE CORPORATION PO BOX 905788 CHARLOTTE, NC 28290-5788 <div style="display: flex;"> <div style="flex: 1;"> <input type="checkbox"/> Payment Address same as Home Office Address <input type="checkbox"/> Payment Address same as Notice Address (check only one) </div> </div>	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders and "Contract Documents" clauses) BAXTER HEALTHCARE CORPORATION ONE BAXTER PARKWAY, DF3-3E DEERFIELD, IL 60015 <div style="display: flex;"> <div style="flex: 1;"> <input checked="" type="checkbox"/> Order Address same as Home Office Address <input type="checkbox"/> Order Address same as Notice Address (check only one) </div> </div>

ACKNOWLEDGMENT OF AMENDMENTS
 Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue. (See "Amendments to Solicitation" Provision)

Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT (See "Discount for Prompt Payment" clause)	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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Table of Contents

SECTION_I	10
ACQUIRE SUPPLIES / EQUIPMENT (JAN 2006)	10
MAXIMUM CONTRACT PERIOD - ESTIMATED (Jan 2006)	10
SECTION_IIA	11
DEFINITIONS (JAN 2006)	11
AMENDMENTS TO SOLICITATION (JAN 2004)	11
AWARD NOTIFICATION (NOV 2007)	11
BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)	11
BID ACCEPTANCE PERIOD (JAN 2004)	12
BID IN ENGLISH and DOLLARS (JAN 2004)	12
BOARD AS PROCUREMENT AGENT (JAN 2004)	12
CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)	12
CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)	13
CODE OF LAWS AVAILABLE (JAN 2006)	13
COMPLETION OF FORMS/CORRECTION OF ERRORS (JAN 2006)	13
DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)	14
DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)	14
DUTY TO INQUIRE (JAN 2006)	14
ETHICS CERTIFICATE (MAY 2008)	14
OMIT TAXES FROM PRICE (JAN 2004)	14
PROTESTS (JUNE 2006)	14
PUBLIC OPENING (JAN 2004)	14
QUESTIONS FROM OFFERORS (JAN 2004)	15
REJECTION/CANCELLATION (JAN 2004)	15
RESPONSIVENESS/IMPROPER OFFERS (JAN 2004)	15
RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004)	15
SIGNING YOUR OFFER (JAN 2004)	16
STATE OFFICE CLOSINGS (JAN 2004)	16
SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002)	16
SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)	16
TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)	17
TAXPAYER IDENTIFICATION NUMBER (JAN 2004)	17
VENDOR REGISTRATION MANDATORY (JAN 2006)	17
WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)	17
SECTION_IIB	19
CLARIFICATION (NOV 2007)	19
MAIL PICKUP (JAN 2006)	19
MAGNETIC MEDIA -- REQUIRED FORMAT (M)	19
OFFERING BY ITEM (JAN 2006)	19
PROTEST - CPO - MMO ADDRESS (JUNE 2006)	19
UNIT PRICES REQUIRED (JAN 2006)	19
SECTION_III	20
SEE BIDDING SCHEDULE	20

DELIVERY/PERFORMANCE LOCATION -- SPECIFIED	
(JAN 2006)	20
QUALITY -- NEW (JAN 2006)	21
SECTION_IV	22
INFORMATION FOR OFFERORS TO SUBMIT --	
GENERAL (JAN 2006)	22
MINORITY PARTICIPATION (JAN 2006)	22
SUBMITTING REDACTED OFFERS (FEB 2007)	22
SECTION_V	23
QUALIFICATION OF OFFEROR (JAN 2006)	23
QUALIFICATIONS -- REQUIRED INFORMATION	
(JAN 2006)	23
SECTION_VI	24
AWARD BY ITEM (JAN 2006)	24
AWARD CRITERIA -- BIDS (JAN 2006)	24
CALCULATING THE LOW BID	24
COMPETITION FROM PUBLIC ENTITIES (JAN 2006)	24
UNIT PRICE GOVERNS (JAN 2006)	24
SECTION_VIIA	25
ASSIGNMENT (JAN 2006)	25
BANKRUPTCY (JAN 2006)	25
CHOICE-OF-LAW (JAN 2006)	25
CONTRACT DOCUMENTS and ORDER OF	
PRECEDENCE (JAN 2006)	25
DISCOUNT FOR PROMPT PAYMENT (JAN 2006)	25
DISPUTES (JAN 2006)	25
EQUAL OPPORTUNITY (JAN 2006)	26
FALSE CLAIMS (JAN 2006)	26
FIXED PRICING REQUIRED (JAN 2006)	26
NON-INDEMNIFICATION (JAN 2006)	26
NOTICE (JAN 2006)	26
PAYMENT (JAN 2006)	26
PUBLICITY (JAN 2006)	26
PURCHASE ORDERS (JAN 2006)	27
SETOFF (JAN 2006)	27
SURVIVAL OF OBLIGATIONS (JAN 2006)	27
TAXES (JAN 2006)	27
TERMINATION DUE TO UNAVAILABILITY OF	
FUNDS (JAN 2006)	27
THIRD PARTY BENEFICIARY (JAN 2006)	27
WAIVER (JAN 2006)	27
SECTION_VIIB	28
CHANGES (JAN 2006)	28
CISG (JAN 2006)	28
CONTRACT LIMITATIONS (JAN 2006)	28
DEFAULT (JAN 2006)	28
ESTIMATED QUANTITY -- PURCHASES FROM	
OTHER SOURCES (JAN 2006)	29
ESTIMATED QUANTITY -- UNKNOWN (JAN 2006)	29
PRICE ADJUSTMENTS (JAN 2006)	29
PRICE ADJUSTMENTS -- LIMITED BY PPI (JAN 2006)	30
PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)	30
PURCHASING CARD (JAN 2006)	30
SHIPPING / RISK OF LOSS (JAN 2006)	30
TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL	
CONTRACT PERIOD (JAN 2006)	30

TERMINATION FOR CONVENIENCE – INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006)	31
TERMINATION FOR CONVENIENCE (JAN 2006)	31
SECTION_VIII	32
BIDDING SCHEDULE (NOV 2007)	32
SECTION_IX	34
NONRESIDENT TAXPAYER REGISTRATION	
AFFIDAVIT INCOME TAX WITHHOLDING	34
OFFEROR'S CHECKLIST (JUN 2007)	34

I. SCOPE OF SOLICITATION

ACQUIRE SUPPLIES / EQUIPMENT (JAN 2006)

The purpose of this solicitation is to establish a source or sources of supply for the purchase of new supplies and/or equipment as listed. [01-1015-1]

It is the intent of the South Carolina Materials Management Office (MMO) on behalf of the South Carolina Department of Health and Environmental Control (DHEC) to solicit offers to establish contract(s) for providing Anti-hemophilia Factor Blood Products.

MAXIMUM CONTRACT PERIOD - ESTIMATED (Jan 2006)

Start date: 07/12/2011 End date: 06/30/2012. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract - Effective Date/Initial Contract Period". [01-1040-1]

II. INSTRUCTIONS TO OFFERORS - A. GENERAL INSTRUCTIONS

DEFINITIONS (JAN 2006)

EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

AMENDMENT means a document issued to supplement the original solicitation document.

BOARD means the South Carolina Budget & Control Board.

BUYER means the Procurement Officer.

CHANGE ORDER means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT See clause entitled Contract Documents & Order of Precedence.

CONTRACT MODIFICATION means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

CONTRACTOR means the Offeror receiving an award as a result of this solicitation.

COVER PAGE means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

OFFER means the bid or proposal submitted in response this solicitation. The terms Bid and Proposal are used interchangeably with the term Offer.

OFFEROR means the single legal entity submitting the offer. The term Bidder is used interchangeably with the term Offeror. See bidding provisions entitled Signing Your Offer and Bid/Proposal As Offer To Contract.

ORDERING ENTITY Using Governmental Unit that has submitted a Purchase Order.

PAGE TWO means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER means the person, or his successor, identified as such on the Cover Page.

YOU and YOUR means Offeror.

SOLICITATION means this document, including all its parts, attachments, and any Amendments.

STATE means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

USING GOVERNMENTAL UNIT means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a Statewide Term Contract as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-4610(5)].

WORK means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

[02-2A003-1]

AMENDMENTS TO SOLICITATION (JAN 2004)

(a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: www.procurement.sc.gov (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged. [02-2A005-1]

AWARD NOTIFICATION (NOV 2007)

Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a total or potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given. [02-2A010-1]

BID/PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed. [02-2A015-1]

BID ACCEPTANCE PERIOD (JAN 2004)

In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing. [02-2A020-1]

BID IN ENGLISH and DOLLARS (JAN 2004)

Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation. [02-2A025-1]

BOARD AS PROCUREMENT AGENT (JAN 2004)

(a) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement. (b) Purchasing Liability. The Procurement Officer is an employee of the Board acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Board is not a party to such contracts, unless and to the extent that the board is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract. [02-2A030-1]

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (MAY 2008)

GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.

(a) By submitting an offer, the offeror certifies that-

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to-

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory-

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure. [02-2A032-1]

CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JAN 2004)

(a) (1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

[02-2A035-1]

CODE OF LAWS AVAILABLE (JAN 2006)

The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at:
<http://www.scstatehouse.gov/code/statmast.htm>. The South Carolina Regulations are available at:
<http://www.scstatehouse.gov/coderegs/statmast.htm> [02-2A040-1]

COMPLETION OF FORMS/CORRECTION OF ERRORS (JAN 2006)

All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.) [02-2A045-1]

DEADLINE FOR SUBMISSION OF OFFER (JAN 2004)

Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)] [02-2A050-1]

DRUG FREE WORK PLACE CERTIFICATION (JAN 2004)

By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

DUTY TO INQUIRE (JAN 2006)

Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention. [02-2A070-1]

ETHICS CERTIFICATE (MAY 2008)

By submitting an offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

OMIT TAXES FROM PRICE (JAN 2004)

Do not include any sales or use taxes in Your price that the State may be required to pay. [02-2A080-1]

PROTESTS (JUNE 2006)

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [Section 11-35-4210] [02-2A085-1]

PUBLIC OPENING (JAN 2004)

Offers will be publicly opened at the date/time and at the location identified on the Cover Page, or last Amendment, whichever is applicable. [02-2A090-1]

QUESTIONS FROM OFFERORS (M)

(a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

All questions must be writing and received by Theresa Watts CPPB, no later than **6/14/2011 @ 5:00 PM**. Send questions by mail, email, or fax to one of the following addresses:

Materials Management Office
Attn: Theresa Watts
1201 Main Street – Suite 600
Columbia, SC 29201
Fax: 803-737-0639
Email: twatts@mmo.sc.gov

REJECTION/CANCELLATION (JAN 2004)

The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065] [02-2A100-1]

RESPONSIVENESS/IMPROPER OFFERS (JAN 2004)

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.
[02-2A105-1]

RESTRICTIONS APPLICABLE TO OFFERORS (JAN 2004)

Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of

the state Ethics Act. (a) After issuance of the solicitation, ***you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials.*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, ***you agree not to give anything to any Using Governmental Unit or its employees, agents or officials prior to award.*** [02-2A110-1]

SIGNING YOUR OFFER (JAN 2004)

Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words by its Partner, and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal. [02-2A115-1]

STATE OFFICE CLOSINGS (JAN 2004)

If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: http://www.scemd.org/scgovweb/weather_alert.html [02-2A120-1]

SUBMITTING CONFIDENTIAL INFORMATION (AUG 2002)

(An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-1]

SUBMITTING YOUR OFFER OR MODIFICATION (JAN 2004)

(a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) - (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation. [02-2A130-1]

TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)

Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. [02-2A135-1]

TAXPAYER IDENTIFICATION NUMBER (JAN 2004)

(a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent.
(b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.
(c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government. [02-2A140-1]

VENDOR REGISTRATION MANDATORY (JAN 2006)

You must have a state vendor number to be eligible to submit an offer. To obtain a state vendor number, visit www.procurement.sc.gov and select New Vendor Registration. (To determine if your business is already registered, go to "Vendor Search"). Upon registration, you will be assigned a state vendor number. Vendors must keep their vendor information current. If you are already registered, you can update your information by selecting Change Vendor Registration. (Please note that vendor registration does not substitute for any obligation to register with the S.C. Secretary of State or S.C. Department of Revenue. You can register with the agencies at <http://www.scbos.com/default.htm>) [02-2A145-1]

WITHDRAWAL OR CORRECTION OF OFFER (JAN 2004)

Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed

II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS

CLARIFICATION (NOV 2007)

Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

MAGNETIC MEDIA -- REQUIRED FORMAT (M)

As noted on the cover page, an original hard copy of your offer must be accompanied by the specified number of copies in the following electronic format: compact disk (CD) in one of the following formats: CD-R; DVD ROM; DVD-R; or DVD+R. Formats such as CD-RW, DVD-RAM, DVD-RW, DVD+RW, or DVIX are not acceptable and will result in the Offeror's proposal being rejected. Every CD must be labeled with offeror's name, solicitation number, and specify whether contents address technical proposal or business proposal. If multiple CD sets are provided, each CD in the set must be appropriately identified as to its relationship to the set, e.g., 1 of 2. Each CD must be identical to the original hard copy. File format shall be MS Word 97 or later or Portable Document File (.pdf).

MAIL PICKUP (JAN 2006)

The State Procurement Office picks up all mail from The US Postal Service once daily around 8:30 a.m. (excluding weekends and holidays). See provision entitled Deadline for Submission of Offer. [02-2B080-1]

OFFERING BY ITEM (JAN 2006)

Offers may be submitted for one or more items. [02-2B085-1]

PROTEST - CPO - MMO ADDRESS (JUNE 2006)

Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to protest-mmo@mmo.sc.gov

(b) by facsimile at 803-737-0639 , or

(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B122-1]

UNIT PRICES REQUIRED (JAN 2006)

Unit price to be shown for each item. [02-2B170-1]

III. SCOPE OF WORK/SPECIFICATIONS

SEE BIDDING SCHEDULE

See Bidding Schedule [03-3005-1]

DELIVERY/PERFORMANCE LOCATION -- SPECIFIED (JAN 2006)

After award, all deliveries shall be made and all services provided to the following address, unless otherwise specified:
Long's Drugs Farrow Road
8810 Farrow Road Suite C
Columbia, SC 29203

[03-3030-1]

SCOPE OF WORK/SPECIFICATIONS

Introduction

The purpose of this bid invitation is to provide a source or sources of supply for the purchase of Anti-Hemophilic Factor Products that will be used in accordance with all requirements stated herein for the South Carolina Department of Health and Environmental Control (SC DHEC), on an as-needed basis. Products purchased by DHEC will be solely for patient care and distribution through DHEC Programs and /or clients and will **NOT BE FOR RESALE.**

The attached detailed specifications must be complied with in providing Anti-hemophilia blood factor products identified herein.

A. General Conditions

1. TO BE CONSIDERED FOR AWARD, ALL ITEMS BID MUST INDICATE NDC NUMBER OR PRODUCT NUMBER.
2. Prices quoted MUST include all packing and handling charges.

B. Contractor Responsibilities

1. After the award, any decrease in the contractor's cost of the finished product due to a general decline in the market, other effective factors, or voluntary price reductions shall be forwarded to Michelle Robinson at SC DHEC, Bureau of Business Management; Division of Procurement Services, 2600 Bull Street, Columbia SC 29201.
2. Where requirements are not otherwise stated in this bid package, all contractors must comply with the "Poison Prevention Packaging Act" of 1970, subsequent amendments, and any applicable South Carolina State Laws.
3. Subcontracting: No portion of this contract may be subcontracted without prior written approval from DHEC.
4. Orders may be issued against this contract up to and including the last day of the contract period. It is understood and agreed that orders will be shipped at the prices in effect on the date shown on the buyer's purchase order or on the date that the order is telephoned to the contractor.

5. Replacement: The contractor agrees to promptly replace any product deemed defective or unsatisfactory. Replacement will be without cost to DHEC. The contractor shall reimburse DHEC for any costs incurred in shipments.
6. Modifications: The contractor agrees to notify Michelle Robinson, SCDHEC, Bureau of Business Management, Procurement Services, of any changes in address, product, NDC number, case, packaging, etc., **IN WRITING**, thirty days prior to any change becoming effective.
7. Invoicing: Invoicing shall be on a per order or shipment basis. All invoices, in triplicate, covering each purchase order or shipment shall be mailed to the "Invoice To" location indicated on each purchase order.
8. Because of the nature of Federal and State funded programs, when DHEC has been issued credit memos and foresees no possibility of using the credit memos in the upcoming six months, the DHEC Bureau of Finance reserves the right to request a credit check in the amount of the credit memo to clear the account. The credit check from the contractor will be submitted within thirty days of the written request.
9. Delivery: Delivery of items shall be no more than two days after contractor receives an order unless a different delivery schedule has been explicitly given by authorized DHEC staff.
10. All shipments must contain a packing list. The packing list and invoice must show the purchase order number.
11. Incorrect Deliveries: It shall be the responsibility of the contractor to pick-up and make correct any deliveries made to the wrong address. Any freight charges incurred in shipping items to the incorrect addresses and /or re-routing to the correct addresses shall be borne solely by the contractor.
12. Product Recalls: Any product recall information during the term of the contract must be submitted in writing to Michelle Robinson, CPPB, SC DHEC Bureau of Business Management, Division of Procurement Services, 2600 Bull Street, Columbia SC 29201.
13. Option to add/delete products: DHEC reserves the right to add and/or delete any products during this contract period.
14. When necessary, contractor must continue to be a source of supply whenever new or replacement contracts are not completed prior to the expiration date of existing contracts. Such extensions are dependent upon the agreement of the contractor and shall not exceed ninety (90) days.

C. Product Specifications

THE MANUFACTURER'S NAME AND EXPIRATION DATE MUST APPEAR ON THE LABEL OF THE PACKAGE FROM WHICH THE PRODUCT IS TO BE DISPENSED.

QUALITY -- NEW (JAN 2006)

All items must be new. [03-3060-1]

IV. INFORMATION FOR OFFERORS TO SUBMIT

INFORMATION FOR OFFERORS TO SUBMIT -- GENERAL (JAN 2006)

Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations. [04-4010-1]

MINORITY PARTICIPATION (JAN 2006)

Is the bidder a South Carolina Certified Minority Business? ☐ Yes ☒ No

Is the bidder a Minority Business certified by another governmental entity? ☐ Yes ☒ No

If so, please list the certifying governmental entity: _____

Will any of the work under this contract be performed by a SC certified Minority Business as a subcontractor? ☐ Yes ☒ No

If so, what percentage of the total value of the contract will be performed by a SC certified Minority Business as a subcontractor?

Will any of the work under this contract be performed by a minority business certified by another governmental entity as a subcontractor? ☐ Yes ☒ No

If so, what percentage of the total value of the contract will be performed by a minority business certified by another governmental entity as a subcontractor? _____

If a certified Minority Business is participating in this contract, please indicate all categories for which the Business is certified:

- ☐ Traditional minority
- ☐ Traditional minority, but female
- ☐ Women (Caucasian females)
- ☐ Hispanic minorities
- ☐ DOT referral (Traditional minority)
- ☐ DOT referral (Caucasian female)
- ☐ Temporary certification
- ☐ SBA 8 (a) certification referral
- ☐ Other minorities (Native American, Asian, etc.)

(If more than one minority contractor will be utilized in the performance of this contract, please provide the information above for each minority business.)

For a list of certified minority firms, please consult the Minority Business Directory, which is available at the following URL:<http://www.govoepp.state.sc.us/osmba/>
[04-4015-1]

SUBMITTING REDACTED OFFERS (FEB 2007)

You are required to mark the original copy of your offer to identify any information that is exempt from public disclosure. You must do so in accordance with the clause entitled "Submitting Confidential Information." In addition, you must also submit one complete copy of your offer from which you have removed any information that you marked as exempt, i.e., a redacted copy. The information redacted should mirror in ever detail the information marked as exempt from public disclosure. The redacted copy should (i) reflect the same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (See clause entitled "Magnetic Media Required Format.") Except for the redacted information, the CD must be identical to the original hard copy. Portable Document Format (.pdf) is preferred. [04-4030-1]

V. QUALIFICATIONS

QUALIFICATION OF OFFEROR (JAN 2006)

To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810. [05-5005-1]

QUALIFICATIONS -- REQUIRED INFORMATION (M)

In order to evaluate your responsibility, offeror shall submit the following information or documentation for the offeror and any subcontractor, if the value of subcontractor's portion of the work exceeds 10% of your price (if in doubt, provide the information):

- (a) Include a brief history of the offeror's experience in providing work of similar size and scope.
- (b) Your most current financial statement, financial statements for your last two fiscal years, and information reflecting your current financial position. If you have audited financial statements meeting these requirements, you must provide those statements. [Reference Statement of Concepts No. 5 (FASB, December, 1984)]
- (c) A list of every business for which offeror has performed, at any time during the past three year(s), services substantially similar to those sought with this solicitation. Err on the side of inclusion; by submitting an offer, offeror represents that the list is complete.
- (e) List of failed projects, suspensions, debarments, and significant litigation.
- (f) Your Dun & Bradstreet (D-U-N-S) number if you have one

While your failure to provide the above information (items A through F) will not render your offer nonresponsive, it may result in your response being scored accordingly or a determination that you are nonresponsible.

- (a) n/a
- (b) n/a
- (c) n/a
- (d) n/a
- (e) n/a
- (f) 00-508-3209

VI. AWARD CRITERIA

AWARD BY ITEM (JAN 2006)

Award will be made by individual item. [06-6005-1]

AWARD CRITERIA -- BIDS (M)

A contract will be awarded to all responsive and responsible vendors. When anti-hemophilic product needs to be purchased, the vendor with the lowest bid for that specific product is contacted to check immediate availability. If the lowest bidder does not have the product currently available, the next vendor with the lowest bid is contacted. This process continues until the needed product is identified for DHEC purchase and immediate shipment to Long's Pharmacy. Award will be made to the lowest responsible and responsive bidder(s). [06-6020-1]

AWARD TO MULTIPLE OFFERORS (JAN 2006)

Award may be made to more than one Offeror. [06-6035-1]

CALCULATING THE LOW BID

The State recognizes that bids for the same item may be submitted in different units (e.g. IU, VL, RCO, RCU, etc) and the low bid will be calculated by comparing RCO/RCU for Humate P, mcg/ug for NovoSeven RT, and all the rest of the items will be compared per IU. [06-6050-1]

COMPETITION FROM PUBLIC ENTITIES (JAN 2006)

If a South Carolina governmental entity submits an offer, the Procurement Officer will, when determining the lowest offer, add to the price provided in any offers submitted by non-governmental entities a percentage equivalent to any applicable sales or use tax. S.C. Code Ann. Regs 117-304.1 (Supp. 2004). [06-6057-1]

UNIT PRICE GOVERNS (JAN 2006)

In determining award, unit prices will govern over extended prices unless otherwise stated. [06-6075-1]

VII. TERMS AND CONDITIONS – A. GENERAL

ASSIGNMENT (JAN 2006)

No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer. [07-7A004-1]

BANKRUPTCY (JAN 2006)

(a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy. [07-7A005-1]

CHOICE-OF-LAW (JAN 2006)

The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. [07-7A010-1]

CONTRACT DOCUMENTS and ORDER OF PRECEDENCE (JAN 2006)

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect. [07-7A015-1]

DISCOUNT FOR PROMPT PAYMENT (JAN 2006)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day
[07-7A020-1]

DISPUTES (JAN 2006)

(1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail. [07-7A025-1]

EQUAL OPPORTUNITY (JAN 2006)

Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference. [07-7A030-1]

FALSE CLAIMS (JAN 2006)

According to the S.C. Code of Laws Section 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime. [07-7A035-1]

FIXED PRICING REQUIRED (JAN 2006)

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

NON-INDEMNIFICATION (JAN 2006)

Any term or condition is void to the extent it requires the State to indemnify anyone. [07-7A045-1]

NOTICE (JAN 2006)

(A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph. [07-7A050-1]

PAYMENT (JAN 2006)

(a) The Using Governmental Unit shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless the purchase order specifies another method of payment, payment will be made by check. (c) Payment and interest shall be made in accordance with S.C. Code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. [07-7A055-1]

PUBLICITY (JAN 2006)

Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer. [07-7A060-1]

PURCHASE ORDERS (JAN 2006)

Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order. [07-7A065-1]

SETOFF (JAN 2006)

The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. [07-7A070-1]

SURVIVAL OF OBLIGATIONS (JAN 2006)

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit. [07-7A075-1]

TAXES (JAN 2006)

Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor. [07-7A080-1]

TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006)

Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term. [07-7A085-1]

THIRD PARTY BENEFICIARY (JAN 2006)

This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise. [07-7A090-1]

WAIVER (JAN 2006)

The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing. [07-7A095-1]

VII. TERMS AND CONDITIONS – B. SPECIAL [SEE ATTACHED BAXTER ADDENDUM B]

CHANGES (JAN 2006)

(1) Contract Modification. By a written order, at any time, and without notice to any surety, the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

(2) Adjustments of Price or Time for Performance. If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the State promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

(3) Time Period for Claim. Within 30 days after receipt of a written contract modification under Paragraph (1) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the State is prejudiced by the delay in notification.

(4) Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.

[07-7B025-1]

CISG (JAN 2006)

The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement. [07-7B030-1]

CONTRACT LIMITATIONS (JAN 2006)

No sales may be made pursuant to this contract for any item or service that is not expressly listed. No sales may be made pursuant to this contract after expiration of this contract. Violation of this provision may result in termination of this contract and may subject contractor to suspension or debarment. [07-7B045-1]

DEFAULT (JAN 2006)

(a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of

the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

[07-7B075-1]

ESTIMATED QUANTITY – PURCHASES FROM OTHER SOURCES (JAN 2006)

The state may bid separately any unusual requirements or large quantities of supplies covered by this contract. [07-7B090-1]

ESTIMATED QUANTITY – UNKNOWN (JAN 2006)

The total quantity of purchases of any individual item on the contract is not known. The State does not guarantee that the State will buy any specified item or total amount. The omission of an estimated purchase quantity does not indicate a lack of need but rather a lack of historical information. [07-7B095-1]

PRICE ADJUSTMENTS (JAN 2006)

(1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as

practicable;

(b) by unit prices specified in the Contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or,

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830.

[07-7B160-1]

PRICE ADJUSTMENTS -- LIMITED BY PPI (JAN 2006)

Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Producer Price Indexes (PPI) for the applicable commodity, as determined by the Procurement Officer. The Bureau of Labor and Statistics publishes this information on the web at www.bls.gov [07-7B180-1]

PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. Section 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR Section 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

[07-7B185-1]

PURCHASING CARD (JAN 2006)

Contractor agrees to accept payment by the South Carolina Purchasing Card for no extra charge. The Purchasing Card is issued by Visa. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order. [07-7B200-1]

SHIPPING / RISK OF LOSS (JAN 2006)

F.O.B. Destination. Destination is the shipping dock of the Using Governmental Units' designated receiving site, or other location, as specified herein. (See Delivery clause) [07-7B220-1]

TERM OF CONTRACT -- EFFECTIVE DATE / INITIAL CONTRACT PERIOD (JAN 2006)

The effective date of this contract is the first day of the Maximum Contract Period as specified on the final statement of award. The initial term of this agreement is Eleven (11) Months and Eighteen (18) days from the effective date. Regardless, this contract

expires no later than the last date stated on the final statement of award. [07-7B240-1]

TERMINATION FOR CONVENIENCE -- INDEFINITE DELIVERY / INDEFINITE QUANTITY CONTRACTS (JAN 2006)

Unless the termination so provides, a termination for convenience shall not operate to terminate any purchase orders issued prior to the effective date of termination. [07-7B255-1]

TERMINATION FOR CONVENIENCE (JAN 2006)

- (1) Termination. The Procurement Officer may terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.
 - (2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
 - (3) Right to Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer: (a) any completed supplies; and (b) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code Section 2-706. Utilization of this Section in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.
 - (4) Compensation. (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data required by Section 11-35-1830 bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
(b) The Procurement Officer and the contractor may agree to a settlement and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated;
(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this Subparagraph:
(i) contract prices for supplies or services accepted under the contract;
(ii) costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid for accepted supplies or services;
(iii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c)(ii) of this paragraph;
(iv) any other reasonable costs that have resulted from the termination. The total sum to be paid the contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
(d) Contractor must demonstrate any costs claimed, agreed to, or established under Subparagraphs (b) and (c) of this Paragraph using its standard record keeping system, provided such system is consistent with any applicable Generally Accepted Accounting Principles.
 - (5) Contractor's failure to include an appropriate termination for convenience clause in any subcontract shall not (i) affect the state's right to require the termination of a subcontract, or (ii) increase the obligation of the state beyond what it would have been if the subcontract had contained an appropriate clause.
- [07-7B265-1]

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL [SEE ATTACHED BAXTER ADDENDUM A]

BIDDING SCHEDULE (NOV 2007)

NOTE: FOR "PRICE PER" –CIRCLE WHICH UNIT OF MEASURE THE PRICE REFLECTS

Coagulation Factor VII A and Anti-Inhibitor Complex

ITEM 1. **Coagulation Factor VII A (Recombinant)**
(Est. annual usage: 600,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

ITEM 2. **Anti-Inhibitor Coagulant Complex (Human); Not less than 200 Units/Vial**
(Est. annual usage: 50,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

Coagulation Factor VIII

ITEM 3. **Antihemophilic Factor VIII, (Recombinant)**
(Est. annual usage: 3,000,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

ITEM 4. **Antihemophilic Factor VIII, Monoclonal Purified (Human): Not less than 200 Units/Vial (Est. annual usage: 400,000 units)**
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

ITEM 5. **Antihemophilic Factor VIII, Solvent Detergent (Human)**
(Est. annual usage: 500,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

Factor VIII Containing von Willebrand Factor

ITEM 6. **Antihemophilic Factor/ von Willebrand Factor Complex, Solvent Detergent (Human)**
(Est. annual usage: 600,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

ITEM 7. **Antihemophilic Factor / von Willebrand Factor Complex, Pasteurized (Human)**
(Est. annual usage: 10,000 units)

Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

Coagulation Factor IX

ITEM 8. **Antihemophilic Factor IX, (Recombinant)**
(Est. annual usage: 400,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

ITEM 9. **Antihemophilic Factor IX, Monoclonal Purified (Plasma)**
(Est. annual usage: 50,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

ITEM 10. **Antihemophilic Factor IX, Solvent Detergent (Plasma)**
(Est. annual usage: 300,000 units)
Mfg. / Brand Name: _____ NDC No.: _____
Size: _____ Packaging: _____
Price per IU-VL-RCO-RCU-OTHER: _____ Minimum Order: _____

IX. ATTACHMENTS TO SOLICITATION

NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING

IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: www.sctax.org

This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-896-1420.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: <http://www.sctax.org/Forms+and+Instructions/withholding/default.htm>

[09-9005-1]

OFFEROR'S CHECKLIST (JUN 2007)

OFFEROR'S CHECKLIST -- AVOID COMMON BID/PROPOSAL MISTAKES

Review this checklist prior to submitting your bid/proposal.

If you fail to follow this checklist, you risk having your bid/proposal rejected.

- Do not include any of your standard contract forms!
- Unless expressly required, do not include any additional boilerplate contract clauses.

- Reread your entire bid/proposal to make sure your bid/proposal does not take exception to any of the state's mandatory requirements.
- Make sure you have properly marked all protected, confidential, or trade secret information in accordance with the instructions entitled: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT mark your entire bid/proposal as confidential, trade secret, or protected! Do not include a legend on the cover stating that your entire response is not to be released!**
- Have you properly acknowledged all amendments? Instructions regarding how to acknowledge an amendment should appear in all amendments issued.
- Make sure your bid/proposal includes a copy of the solicitation cover page. Make sure the cover page is signed by a person that is authorized to contractually bind your business.
- Make sure your Bid/proposal includes the number of copies requested.
- Check to ensure your Bid/proposal includes everything requested!
- If you have concerns about the solicitation, do not raise those concerns in your response! **After opening, it is too late! If this solicitation includes a pre-bid/proposal conference or a question & answer period, raise your questions as a part of that process!** Please see instructions under the heading "submission of questions" and any provisions regarding pre-bid/proposal conferences.

[09-9010-1]

**ADDENDUM A TO
BIDDING SCHEDULE – EFFECTIVE JULY 1, 2011**

<u>ITEM CODE</u>	<u>DESCRIPTION</u>	<u>PRICE</u>
<u>ANTIHEMOPHILIC FACTOR (RECOMBINANT)</u> (ADVATE WITH BAXJECT II)		
ADVATE rAHF-PFM 1500243 NDC# 00944-2941-10	200-400 Factor VIII International Units in 5mL	\$0.96/FVIII IU
ADVATE rAHF-PFM 1500244 NDC# 00944-2942-10	401-800 Factor VIII International Units in 5mL	\$0.96/FVIII IU
ADVATE rAHF-PFM 1500245 NDC# 00944-2943-10	801-1200 Factor VIII International Units in 5mL	\$0.96/FVIII IU
ADVATE rAHF-PFM 1500246 NDC# 00944-2944-10	1201-1800 Factor VIII International Units in 5mL	\$0.96/FVIII IU
ADVATE rAHF-PFM 1501376 NDC# 00944-2945-10	1801-2400 Factor VIII International Units in 5mL	\$0.96/FVIII IU
ADVATE rAHF-PFM 1501486 NDC# 00944-2946-10	2401-3600 Factor VIII International Units in 5mL	\$0.96/FVIII IU
<u>TRANSFER DEVICE</u>		
Siliconized Transfer/Filter Needle Combo Pack 060050 Fair Market Value for Item Code 060050 is \$14.80/case	10 each per box	No Charge
<u>ANTIHEMOPHILIC FACTOR (RECOMBINANT)</u> (RECOMBINATE WITH BAXJECT II)		
Recombinate rAHF 1502735 NDC # 0944-2841-10	220-400 Factor VIII International Units in 5 mL	\$0.95/FVIII IU
Recombinate rAHF 1502736 NDC # 0944-2842-10	401-800 Factor VIII International Units in 5 mL	\$0.95/FVIII IU
Recombinate rAHF 1502737 NDC # 0944-2843-10	801-1240 Factor VIII International Units in 5 mL	\$0.95/FVIII IU
Recombinate rAHF 1503132 NDC # 0944-2844-10	1241-1800 Factor VIII International Units in 5 mL	\$0.95/FVIII IU
Recombinate rAHF 1503133 NDC # 0944-2845-10	1801-2400 Factor VIII International Units in 5 mL	\$0.95/FVIII IU

**ADDENDUM A TO
BIDDING SCHEDULE – EFFECTIVE JULY 1, 2011 (continued)**

<u>ITEM CODE</u>	<u>DESCRIPTION</u>	<u>PRICE</u>
<u>ANTIHEMOPHILIC FACTOR (HUMAN), Method M MONOCLONAL PURIFIED (FACTOR VIII CONCENTRATE)</u>		
Hemofil M AHF 1501805 NDC# 0944-2930-01	220-400 International Units of AHF Activity in 10 mL	\$0.71/IU
Hemofil M AHF 1501806 NDC# 0944-2931-01	401-800 International Units of AHF Activity in 10 mL	\$0.71/IU
Hemofil M AHF 1501807 NDC# 0944-2932-01	801-1700 International Units of AHF Activity in 10 mL	\$0.71/IU
Hemofil M AHF1501808 NDC# 0944-2933-01	1701-2000 International Units of AHF Activity in 10 mL	\$0.71/IU

ANTI-INHIBITOR COAGULANT COMPLEX

FEIBA NF 1502300 NDC # 64193-223-02	400-650 International Units in 20mL	\$1.39/IU
FEIBA NF 1502301 NDC # 64193-224-02	651-1200 International Units in 20mL	\$1.39/IU
FEIBA NF 1502302 NDC # 64193-225-02	1750-3250 International Units in 50mL	\$1.39/IU
Bebulin 1503346 NDC # 64193-445-02	500-700 International Units in 20 mL	\$0.87/IU

NEEDLE-LESS TRANSFER DEVICE

BAXJECT II Device 1500234 Fair Market Value for Item Code 1500234 is \$23.85/case	5 each per box	No Charge
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TRANSFER DEVICE

Transfer/Filter Needle Combo Pack 060125 Fair Market Value for Item Code 060125 is \$16.40/case	10 each per box	No Charge
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Baxter, Hemofil M, Recombinate, Advate, Baxject, Bebulin, FEIBA NF, FEIBA VH, and Interlink are trademarks of Baxter International Inc. The Transfer Device Combo Packs are manufactured by Baxter, Irvine, California.

Baxter agrees to hold firm the prices set forth on Exhibit A for ninety (90) days from the Effective Date. Thereafter, Baxter may increase prices anytime upon thirty (30) day prior written notice to Customer. All price increases shall be firm for no less than 90 days from and after the effective date of each price change, as applicable.

ADDENDUM B TO BIDDING SCHEDULE

1. **Conditions of Sale.** Baxter agrees to sell the Therapeutics and Devices to Customer provided that (i) the Therapeutic and Devices are available at the time of the order, (ii) Baxter accepts the order, and (iii) Customer is in full compliance with the terms and conditions of this Agreement. Customer agrees to purchase the Therapeutics and Devices for use within the United States for the benefit of patients for whom (a) Customer holds an active prescription for the Therapeutics and Devices, and/or (b) Customer provides homecare services, and/or (c) a doctor has ordered their use.
2. **Force Majeure Event.** Baxter shall use commercially reasonable efforts to fill orders but shall not be liable for non-performance or delays caused by a shortage of supply of raw materials, manufacturing problems, delivery or labor problems, intervention of any governmental authority or acts of regulatory agencies, fires, earthquakes, acts of God or causes beyond its control. Customer agrees that in such events Baxter, without liability to Customer, may allocate Therapeutics and Devices among all of its customers. In the event Baxter is notified of and is able to verify a decision which changes the purchase and delivery of Therapeutics and Devices for a patient or a group of patients either to or from Customer, then to the extent it is able, Baxter may have to make appropriate adjustments in the supply of Therapeutics and Devices provided to Customer.
3. **Return Goods Policy.** Baxter can accept for credit only those Therapeutics and Devices that (a) do not perform pursuant to Baxter's specifications for the Therapeutics and Devices, (b) may have been damaged during transportation, or (c) Customer may have received in error. Due to the biological nature of the Therapeutics and Devices and the government regulations involved, return of the Therapeutics and Devices must be authorized before any returns will be accepted. Customer shall contact Baxter Customer Service for instructions on the return procedure to be followed.
4. **Warranty.** Baxter and its affiliates warrant that Therapeutics and Devices shipped or delivered to Customer will not, at the time of shipment by Baxter or its affiliates, be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, nor will such Therapeutics and Devices be an article which may not, under provisions of sections 404 and 505 of said act, be introduced into interstate commerce. Baxter and its affiliates further represent and warrant that all Therapeutics and Devices delivered to Customer when stored and used in accordance with the directions on the labeling, are fit for the purposes and indications described in the labeling. Unless the Therapeutics and Devices are used in accordance with their instructions, these warranties are void and of no effect. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BAXTER AND ITS AFFILIATES' SOLE OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY SHALL BE, AT BAXTER'S OPTION, TO REPAIR OR REPLACE THE THERAPEUTICS AND DEVICES. NEITHER BAXTER NOR ITS AFFILIATES SHALL BE LIABLE FOR PROXIMATE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, LOSS OF PROFITS, COST OF REPLACEMENT, OR COMMERCIAL LOSS) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE THERAPEUTICS AND DEVICES SOLD HEREUNDER, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
5. **Termination.** Either Party to this Agreement may cancel this Agreement at any time without cause upon thirty (30) days prior written notice to the other Party at the addresses noted in this Agreement. From and after the effective date of termination, neither Party shall have any obligation to the other.
6. **Confidentiality.** Neither Customer nor Baxter shall disclose the terms of this Agreement to any other person or entity outside its organization and affiliates or make any public announcement concerning the existence of this Agreement or its terms, unless such Party receives the prior written approval of the other Party or such disclosure is required by law, subpoena or other judicial or administrative process or pursuant to Generally Accepted Accounting Principles. For purposes of this provision, an affiliate is an entity in which Customer or Baxter, as appropriate, maintains an ownership position in or a contractual relationship with, and the disclosure is required so that the disclosing Party may fulfill its obligations hereunder.

ADDENDUM B TO BIDDING SCHEDULE – (continued)

7. **Severability.** In the event any portion of this Agreement is declared void or invalid by a court or tribunal of competent jurisdiction, such provision shall be modified or severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to alter substantially this Agreement or the obligations of the Parties, in which case this Agreement may be immediately terminated.

8. **Controlling Document.** In the event of any conflict between this Addendum and any document, instrument or agreement prepared by Seller (including, without limitation Seller's purchase orders, invoices, and warranties), the terms of this Addendum shall control.